IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5523 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHUSANG VAGHSING VAGHELA - Petitioner(s)

Versus

LALASINH KACHRAJI VAGHELA - Respondent(s)

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Appearance :
MR SK BUKHARI for Petitioner No(s).: 1 - 1.
None for Respondent No(s).: 1.
MR. DHARMESH PATEL for MR SK PATEL for Respondent No(s).: 1.
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 08/08/2005

ORAL JUDGMENT

1.Instant petition under Article 227 of the Constitution of India is filed against the order dated 24.2.2005

recorded below application Exh.18 in Regular Civil Suit No. 43 of 2004 by the learned Civil Judge (JD), Prantij by which the application filed by the petitioners seeking amendment in the Plaint as envisaged under Order 6 Rule 17 of the Code of Civil Procedure ('the Code' for short) has been rejected.

2. The agricultural land bearing new block nos. 534, 659, 680, 646 and 751 situated in the sim of Sonasan, Taluka Prantij, District Sabarkantha were ancestral properties of the petitioners and the respondent. After the death of Bavaji Vaghela, the said lands jointly inherited by Vaghaji Bavaji and Kachraji Bavaji Vegala and both were jointly cultivating the same during their life time.

3. During their life time, in the year 1976, Vagaji Bavaji and Shri Kachraji Bavaji orally partitioned the aforesaid lands and as per the said oral partition, the lands bearing Block nos. 534 and 680 were given to the share of Kachraji Bavaji Vaghela, the father of the respondent and the land bearing Block nos. 646, 685 and 741 were given to the share of Vaghaji Bavaji Vaghela, the father of the petitioner nos. 1 and 2 and husband of petitioner no.3 and the necessary revenue entry in respect whereof was entered in the revenue record of village Sonasan which was certified on 7.06.1976. However, the land bearing Block No. 659 admeasuring Acre 0-56 Gunthas was not partitioned and the same was continued as joint ownership and cultivation of Vaghaji Bavaji Vaghela and Kachraji Bavaji Vaghela.

4. Thereafter on 14.9.1981, Kachraji Bavaji Vaghela expired and the land belonging to his share came to be inherited by his heirs and as the other heirs of deceased Kachraji Bavaji Vaghela released their share

in favour of respondent no.1, all lands bearing Block Nos. 536 and 680 were entered into the name of the respondent as per revenue entry no. 6182. The said Vaghaji Bavaji also expired in the year 1988 and the lands given to his share i.e. Block nos. 646, 685 and 741 were entered into the names of petitioners by succession as per revenue entry no. 6618 dated 22.7.1988 and accordingly, the aforesaid lands were cultivated by the respondent and the petitioners respectively.

5. So far as Block no. 659, which had remained undivided and belonged to joint ownership and cultivation of the petitioners and respondent, the respondent, with mala fide intention and by misrepresentation, illegally and behind the back of the petitioners, under the guise of so called partition of Block no. 659, managed to enter Acre 0-36 Gunthas out of Block no. 659, in the name of the respondent and the remaining Acre 0-20 Gunthas entered into the name of the petitioners. Accordingly, the respondent managed to snatch away Acres 0-8 Gunthas of land of Block no. 659 from the share of the petitioners illegally and mala fide.

6. Thereafter the petitioners filed a Regular Civil suit No. 43 of 2004 in the Court of Civil Judge (JD) at Prantij against the respondent praying for a declaratory decree. The petitioners also prayed for other reliefs. The petitioners also submitted an application exh.5 praying for interim reliefs. In the said application, the learned Judge, after hearing, by order dated 15.7.2004 directed both the parties to maintain status quo. In the said suit, the petitioners also filed an application for making panchnama and accordingly, the learned Judge appointed Court

Commissioner, who prepared Panchnama and submitted the same to the learned Judge. Inspite of service of summons, the respondent has not filed his written statement till date. Thereafter the petitioners submitted an application, exh.18 on 23.7.2004 praying to amend the plaint as provided under Order 6 Rule 17 of the Code, by which the petitioners wanted to incorporate some facts which have remained to be mentioned in the plaint through oversight by the advocate of the petitioners, against which the respondent submitted reply objecting the grant of amendment application. The learned Judge, after hearing, by order dated 24.2.2005, dismissed the amendment application of the petitioners, which has given rise to the present petition at the instance of the original plaintiff.

7. This Court has considered the submissions advanced by Mr. S.K.Bukhari, learned advocate of the petitioners and Mr. Dharmesh Patel, learned advocate for the respondent and perused the impugned order.

8. So far as the factual matrix with regard to the dispute involved between the parties is concerned, there is no dispute. It may be noted that the petitioners have filed amendment application within a period of one week only after filing of the suit. By the proposed amendment the petitioners want to make further averment with regard to the standing crops on the disputed land. The learned trial Judge has rejected the amendment only on the ground that the proposed amendment was sought for after the Court Commissioner prepared the Panchnama and by the proposed amendment the entire nature of the suit would be changed.

9. According to this Court, the reasons assigned by the learned trial Judge refusing to grant amendment is not convincing. When the amendment was filed within a period of only one week, the learned trial Judge ought to have allowed the amendment to do the substantial justice between the parties.

10. In aforesaid view of the matter, the order impugned under this petition, deserves to be quashed and set aside by allowing this petition.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. Resultantly, the order dated 24.2.2005 recorded below application exh.18 in Regular Civil Suit No. 43 of 2004 by the learned Civil Judge (JD), Prantij refusing to grant the amendment is quashed and set aside, the result of which is that the application exh.18 seeking amendment is granted. Rule is made absolute.

12. The petitioners are directed to carry out the amendment in Regular Civil Suit No. 43 of 2004 filed by them before the trial Court, within a period of 14 days from the date of receipt of writ of this Court.

Direct service permitted.

(A.M.Kapadia,J)

Jayanti*